

**STATE OF ILLINOIS**

**ILLINOIS COMMERCE COMMISSION**

<b>Grandview Mutual Telephone Co.</b>	:	
	:	
<b>Petition for Suspension or</b>	:	
<b>Modification of Section 251(b)(2)</b>	:	
<b>Requirements of the Federal</b>	:	<b>04-0282</b>
<b>Telecommunications Act Pursuant</b>	:	
<b>to Section 251(f)(2) of said Act; for</b>	:	
<b>entry of Interim Order; and for other</b>	:	
<b>necessary relief.</b>	:	

**PROPOSED ORDER**

By the Commission:

**I. INTRODUCTION**

On March 18, 2004, Grandview Mutual Telephone Company ("Petitioner") filed with the Illinois Commerce Commission ("Commission") a verified petition pursuant to Section 251(f)(2) of the Federal Telecommunications Act of 1996 ("TA96"), 47 U.S.C. 151 et seq. Petitioner seeks an order suspending or modifying the local number portability ("LNP") requirements imposed by Section 251(b)(2) of the TA96. On May 11, 2004, the Commission entered, as requested by Petitioner, an Interim Order suspending any obligation of Petitioner to provide wireline-to-wireless LNP until a final order is entered in this proceeding.

Pursuant to due notice, hearings were held in this matter before a duly authorized Administrative Law Judge of the Commission at its offices in Springfield, Illinois on April 1, April 5, April 27, and June 11, 2004. Appearances were entered by counsel on behalf of Petitioner, Commission Staff ("Staff"), and the only intervener, Verizon Wireless ("VW"). No other appearances were entered. At the June 11 evidentiary hearing, Tom Korte, a Vice President of Eagle Rock Consulting,<sup>1</sup> offered testimony on behalf of Petitioner. Staff called Jeff Hoagg, Principal Policy Advisor in the Commission's Telecommunications Division, and Mark Hanson, a Rate Analyst in the Telecommunications Division, to testify. Michael McDermott, VW's Regional Director of State Public Policy, testified on behalf of VW. At the end of the June 11 hearing, the record was marked "Heard and Taken." Petitioner, Staff, and VW each submitted a Brief.<sup>2</sup> A Proposed Order was served on the parties.

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<sup>1</sup> Eagle Rock Consulting provides consulting services for small telecommunications companies.

<sup>2</sup> In light of the statutory deadline in this matter, the schedule did not call for the submission of Reply Briefs.

## II. BACKGROUND

Petitioner is a facilities-based incumbent local exchange carrier (“LEC”) providing local exchange telecommunications services as a mutual telephone company. As a mutual telephone company, Petitioner is not a telecommunications carrier as defined in Section 13-202 of the Public Utilities Act (“Act”), 220 ILCS 5/1-101 et seq. The Commission nevertheless has jurisdiction to consider the petition pursuant to Section 251(f) of the TA96. Petitioner provides service in the Grandview Exchange, which is not located in a Top 100 Metropolitan Statistical Area (“MSA”). As of December 31, 2003, Petitioner provided service to approximately 100 access lines, which is less than 2% of subscriber lines nationwide. Petitioner’s service area consists of approximately five square miles. Petitioner is a “rural telephone company” within the meaning of Section 153(37) of the TA96 and Section 51.5 of the rules of the Federal Communications Commission (“FCC”). As a rural telephone company, Petitioner possesses a rural exemption under Section 251(f)(1)(A) of the TA96 from the requirements of Section 251(c) of the TA96.

## III. GOVERNING LAW

Section 251(b)(2) of the TA96 provides in part:

(b) Obligations of All Local Exchange Carriers.—Each local exchange carrier has the following duties:

\* \* \*

(2) Number Portability.—The duty to provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the [FCC].

In implementing its authority, the FCC, on November 10, 2003, released a *Memorandum Opinion and Order and Further Notice of Proposed Rulemaking* in CC Docket No. 95-116 (“FCC Order”). The FCC concluded in part that LECs must port numbers to wireless carriers where the requesting wireless carriers’ “coverage area” overlaps the geographic locations of the rate center in which the customer’s wireline number was provisioned, provided that the porting-in carrier maintains the number’s original rate center designation following the port. As it pertains to incumbent LECs (“ILEC”) outside of the Top 100 MSAs, the FCC Order concludes, in part, at paragraph 29 as follows:

[W]e hereby waive, until May 24, 2004, the requirement that these carriers port numbers to wireless carriers that do not have a point of interconnection or numbering resources in the rate center where the customer’s wireline number is provisioned. We find that this transition period will help ensure a smooth transition for carriers operating outside of

the 100 largest MSAs and provide them with sufficient time to make necessary modifications to their systems.

Previously, however, the FCC adopted 47 C.F.R 52.23(c), which also concerns LNP and provides that:

(c) Beginning January 1, 1999, all LECs must make a long-term database method for number portability available within six months after a specific request by another telecommunications carrier in areas in which that telecommunications carrier is operating or plans to operate.

Despite the FCC's rules, though, rural telephone companies may still avoid LNP requirements pursuant to Section 251(f)(2) of the TA96. This section states:

(2) Suspensions and Modifications For Rural Carriers.—A local exchange carrier with fewer than 2 percent of the Nation's subscriber lines installed in the aggregate nationwide may petition a State commission for a suspension or modification of the application of a requirement or requirements of subsection (b) or (c) to telephone exchange service facilities specified in such petition. The State commission shall grant such petition to the extent that, and for such duration as, the State commission determines that such suspension or modification—

(A) is necessary—

(i) to avoid a significant adverse economic impact on users of telecommunications services generally;

(ii) to avoid imposing a requirement that is unduly economically burdensome; or

(iii) to avoid imposing a requirement that is technically infeasible; and

(B) is consistent with the public interest, convenience, and necessity.

The State commission shall act upon any petition filed under this paragraph within 180 days after receiving such petition. Pending such action, the State commission may suspend enforcement of the requirement or requirements to which the petition applies with respect to the petitioning carrier or carriers.

#### **IV. PARTIES' POSITIONS**

##### **A. Petitioner's Position**

Petitioner requests a suspension of its obligation to provide wireline-to-wireless LNP until November 24, 2006. At the evidentiary hearing, Petitioner indicated that it was limiting the grounds for its request to the criteria contained in Section 251(f)(2)(A)(i); i.e., to avoid a significant adverse economic impact on users of

telecommunications services generally, and (B); i.e., is consistent with the public interests, convenience and necessity. Petitioner indicates that it is limiting its request in this manner since that is the statutory criteria under which Staff is recommending that Petitioner be granted a temporary suspension. Generally, Petitioner considers the monthly charge to customers resulting from its implementation of wireline-to-wireless LNP unreasonably high for customers to bear. Petitioner also generally believes a temporary suspension is in the public interest because it anticipates minimal demand for wireline-to-wireless LNP, foresees difficulties in implementing wireline-to-wireless LNP, and has concerns over regulatory uncertainties stemming from questions yet to be answered by the FCC.

In light of many of the arguments raised by VW, Petitioner wants the Commission to have a clear understanding of what is at issue in this proceeding. This docket is not about whether VW or other wireless carriers can currently compete for Petitioner's customers. Petitioner states that VW and other wireless carriers already provide service in Petitioner's local serving area. Therefore, Petitioner asserts, the presence or absence of wireline-to-wireless LNP will not impact or reduce the current level of competition for customers in Petitioner's serving area or narrow the alternatives for any customers living in Petitioner's serving area. Rather, Petitioner continues, wireline-to-wireless LNP is only an incremental extension of competition, allowing customers who wish to abandon their wireline telephone altogether to port their wireline telephone number to their wireless carrier, thus abandoning their current wireless numbers. Petitioner states further that this case is also not about whether customers are interested in porting telephone numbers from one wireless carrier to another wireless carrier. While customers porting from one wireless carrier to another wireless carrier are expressing a preference only among different wireless carriers (which would have no impact on their wireline service), Petitioner explains that customers seeking a wireline-to-wireless port are normally replacing their wireline service with a wireless-only alternative, thus foregoing wireline service altogether. What this case is about, Petitioner emphasizes, is the cost of wireline-to-wireless LNP to customers who chose not to port their number and remain with their LEC.

As a general matter, Petitioner states that it provides to its customers the services they want when a sufficient number of customers desire the service and all of its customers are willing to pay the associated costs. Petitioner does not believe that it should be required to incur the associated costs to provide wireline-to-wireless LNP nor its customers be required to pay for what it characterizes as a discretionary service until its customers want the service and are willing to pay for wireline-to-wireless LNP. Petitioner's witness testifies that as a small company, Petitioner is in close contact with its customers and has received no request from its customers for wireline-to-wireless LNP.

While correspondence and documents received by Petitioner from at least one wireless carrier related to wireline-to-wireless LNP were entered into the record, it is Petitioner's position that this Commission need not make a determination as to whether or not those documents constitute a bona fide request ("BFR") in connection with the

determinations to be made in this docket. Regardless of whether or not it has received a BFR for wireline-to-wireless LNP, Petitioner believes that it is best to defer implementation of wireline-to-wireless LNP within its serving area until such time as the operational, administrative, and technical problems associated with its provision have been worked out on a more global basis by the larger ILECs, such as SBC, and the larger wireless carriers requesting number portability. Petitioner's witness considers it significant that (1) Petitioner has not received a 251(c) BFR for interconnection, services, or network elements from any telecommunications carrier; (2) no telecommunications carrier has asked the Commission to terminate Petitioner's rural exemption pursuant to the provisions of 251(f)(1)(B) of the TA96; and (3) no wireline telecommunications carrier has requested LNP. These facts, Petitioner argues, evidence the lack of sufficient or significant demand for LNP or service from competitive providers. These facts, according to Petitioner, also indicate that Petitioner lacks any experience in providing LNP and would have to incur new or incremental costs to provide wireline-to-wireless LNP now.

Companies such as SBC, on the other hand, have been providing some type of LNP for a number of years, according to Petitioner. Those companies, Petitioner observes, have already made the incremental investment to provide LNP and have trained employees and have had ongoing business experience in the provision of at least some type of LNP. Petitioner asserts that statements from the FCC, news stories, and the trade press have made clear that there are indeed operational, administrative, and technical problems that need to be worked through on an industry basis.

In Petitioner's view, from a policy and industry perspective, this would appear to be similar to the situation when customers were initially allowed to presubscribe to interexchange carriers. Petitioner states that presubscription was initially implemented by the large carriers, such as the regional bell operating companies; and the operational, administrative, and technical difficulties associated with presubscription were worked out over a period of time between those large ILECs and the large interexchange carriers, such as AT&T, MCI, and Sprint. In connection with determinations made related to the Primary Toll Carrier Plan in Illinois, Petitioner relates that the Commission provided a different and subsequent timetable of presubscription for small companies, such as itself, after experience had been gained from the larger companies.

With regard to implementing wireline-to-wireless LNP, Petitioner reports that the FCC's orders and rules as they now stand do not require a wireless carrier to have a point of presence within Petitioner's serving area, nor do they require the wireless carrier to establish direct trunks to Petitioner for the purpose of delivering calls. Since no wireless carrier has a point of interconnection or numbering resources in any exchange or rate center within its serving area, Petitioner believes, based upon the FCC's current requirements, that all calls from one of its wireline customers to one of its customers who had ported his/her number to a wireless carrier would have to be transported to the tandem that particular Petitioner office subtends for delivery to the wireless carrier where it does have interconnection. Petitioner states that the routing of

a call to a location outside of its local calling area would normally lead to such a call being rated as an interexchange call or toll call.

Additionally, Petitioner argues that it should in no event be required to provide wireline-to-wireless LNP until such time as regulatory decisions have been made and mechanisms put in place that will allow it to recover all of its costs associated with the provision of wireline-to-wireless LNP. Petitioner complains that the FCC's orders to date, including the November 10, 2003 FCC Order, fail to address how numerous significant costs, such as the cost of transporting calls to wireless points of interconnection outside of the ILEC's serving area and associated transiting or tandem switching costs, will be recovered. While it is Petitioner's belief that those costs should not be borne by it or its customers, Petitioner states that no regulatory decision by the FCC or this Commission has been made as to how those costs will be recovered and mechanisms put in place to allow for such recovery.

While it does not believe that it or its customers should be responsible for the transport and transiting costs associated with delivering calls to wireless carriers, for purposes of evaluating the economic burden in this proceeding Petitioner has assumed that it, and ultimately its customers, will be responsible for such costs.<sup>3</sup> Petitioner uses the FCC's existing rules regarding cost recovery for wireline-to-wireless LNP pursuant to which a federal end-user surcharge could be tarified and filed. The FCC's rules provide for certain investment costs and certain ongoing expenses to be recovered over a five-year period. In estimating its costs, Petitioner uses a model based on cost support filed and approved by the National Exchange Carrier Association ("NECA") in a LNP filing it made with the FCC in NECA's Transmittal #956.

In estimating its costs, Petitioner notes that its Mitel GX5000 switch will not accommodate number portability. According to the Petitioner, the generic software in its switch would need to be upgraded in order to be LNP capable. Personnel from the switch manufacturer would need to make translations in the switch and perform testing and verification. Petitioner indicates in its testimony that it would need to file an application with the Number Portability Administration Center ("NPAC") and sign agreements to access the NPAC service management system and would need to enter into an agreement with a vendor to provide LNP Service Order Administration Services. Since at least calls to ported numbers and long distance calls would need to have a database dip in connection with the provision of LNP, Petitioner further asserts it would need to enter into an agreement with an LNP database provider, which would include query charges being assessed to Petitioner. Technical training for its employees, Petitioner continues, would also be necessary. Petitioner's witness also testified that incremental costs would be incurred by Petitioner in connection with administrative, order processing, customer service, regulatory and legal costs, as well as costs associated with general employee training and customer education.

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<sup>3</sup> Petitioner does not seek Commission approval of any type of end user surcharge or other increased rate associated with the provision of wireline-to-wireless LNP.

Petitioner calculates that initial LNP start-up costs and certain ongoing expenses over a five year period amount to \$40,424 before applying present value factors. After applying present value factors, the cost is \$36,548. To recover its costs, Petitioner estimates that it would have to recover \$8.99 per month from each access line. Attachment 1 to Petitioner's Exhibit 1 shows how Petitioner arrived at these cost estimates.<sup>4</sup> In light of these costs, it is Petitioner's position that a suspension or modification of any obligation it may have to provide wireline-to-wireless LNP is necessary to avoid a significant adverse economic impact on its customers and that the granting of such further suspension is consistent with the public interest, convenience and necessity. Even after all cost recovery and technical matters are resolved, Petitioner states that it should not have to provide wireline-to-wireless LNP until between 6%-10% of its customers express a desire for wireline-to-wireless LNP.

Petitioner concurs with and supports the costs/benefit analysis contained in the testimony of Staff witness Hoagg, as well as his recommendation that Petitioner be granted a temporary suspension. Petitioner indicates that the costs/benefit analysis and the focus on the adverse impact of cost recovery on Petitioner's customers is particularly appropriate since the FCC surcharge is imposed on all customer access lines that do not elect to port their landline number, rather than the cost causers; i.e., the wireless carriers and any customer who does elect to port his or her number.

Petitioner acknowledges that because not every LEC is requesting a suspension of the wireline-to-wireless LNP requirements a patchwork of wireline-to-wireless LNP availability may result. But Petitioner does not believe that such a patchwork should be a significant concern to the Commission. Petitioner asserts that two other facts available to the Commission support Petitioner's position regarding the potential patchwork. First, wireline-to-wireline LNP has been available in some but not other Illinois exchanges for a number of years. Petitioner explains that that patchwork is the result of the FCC's own plan for initiating number portability, i.e., that it be rolled out initially only in the Top 100 MSAs and thereafter only in exchanges where there was a BFR for interconnection and LNP. Despite the fact that neighbors across a road who happen to live on two sides of an exchange boundary may have different access to wireline-to-wireline LNP, Petitioner states that there is no record that this patchwork has caused any consumer confusion or complaints.

Second, customers in different areas of Illinois have different access to advanced services. Petitioner notes that in 2001, the General Assembly enacted Section 13-517 of the Act, requiring every ILEC in Illinois to provide advanced telecommunications services to not less than 80% of its customers by January 1, 2005. Although Section 13-517 has a suspension provision, neither Petitioner nor any other small carrier in Illinois has sought to invoke it. In fact, only one ILEC has sought and has been granted a suspension—Verizon. (See Order of June 24, 2003 in Docket No. 02-0560) Petitioner

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<sup>4</sup> While Petitioner does not necessarily agree with some of Staff's adjustments to its cost estimates, Petitioner acknowledges that any discussion of the adjustments is academic in light of Staff's support for a temporary suspension and the fact that Staff's support for a temporary suspension is based upon the lower per access line per month charge of \$3.93.

asserts that the patchwork availability of advanced telecommunications services did not outweigh the Commission's decision to suspend for three years the requirements of 13-517. Nor, Petitioner continues, does the existence of a patchwork of different service availability outweigh the public interest in granting this suspension.

With regard to the connection between number portability and number pooling, Petitioner wants the Commission to understand that delaying wireline-to-wireless LNP will not materially increase the use of numbering resources as a result of competition. Wireless carriers, Petitioner observes, already compete in the areas served by Petitioner and already have their own numbering resources. Petitioner states further that no competitive LEC has sought to interconnect with it and no wireless carrier has a rating point in its exchanges. Therefore, even if Petitioner could participate in number pooling, Petitioner asserts that there is no carrier with which it could share thousands blocks, since all thousands blocks must be rated to the same rating point. Petitioner maintains that suspending its wireline-to-wireless LNP obligations will not have any material impact on numbering resources.

In responding to VW, Petitioner asserts that VW presented no evidence challenging the LNP incremental cost analysis and evidence presented by Petitioner and Staff that a suspension is necessary in order to avoid a significant adverse economic impact on Petitioner's customers. Petitioner argues further that VW's reference to and reliance upon the Federal standard contained in 47 C.F.R. § 51.405(d) related to "undue economic burden" on a company is irrelevant since it pertains to the statutory standard contained in Section 251(f)(2)(A)(ii), not Section 251(f)(2)(A)(i)—the standard under which Petitioner has sought and Staff has recommended a further temporary suspension.

According to Petitioner, VW's argument that a suspension under Section 251(f)(2)(A) is not available to Petitioner is simply wrong. While the FCC may have relied on Section 332 of the TA96 to impose LNP obligations on wireless carriers (Section 251(b) is applicable only to LECs), the LECs' obligations, including Petitioner's, arise only from Section 251(b). Petitioner avers that seeking a suspension or modification of a Section 251(b) or (c) obligation is the statutory right and remedy provided to 2% LECs as set forth in the TA96.

Petitioner also addresses VW's claim that Petitioner has been dilatory in seeking a suspension. According to Petitioner, VW mischaracterizes the FCC's path to ordering wireline-to-wireless LNP. As Petitioner's testimony sets out, no wireless carrier has a point of presence or numbering resources in Petitioner's serving area. While the FCC's earlier orders required "service provider" number portability, the FCC had never required "geographic" or "location" number portability. Prior to the FCC's November 10, 2003 Order, Petitioner, as well as other LECs in Illinois and throughout the nation, had concluded that, in circumstances where wireless carriers did not have a point of presence or numbering resources within a LEC serving area, any request for porting would constitute "location" portability that was outside of the FCC requirement. Petitioner also observes that it, together with other small companies in Illinois, had



monitored a request for a temporary suspension filed by five other small ILECs in a Top 100 MSA.<sup>5</sup> Rather than immediately burdening Staff and the Commission with additional suspension requests, Petitioner promptly filed its petition with the Commission after Staff in the first five dockets recommended at the February 23, 2004 hearing that a temporary suspension was justified and should be granted to those companies until November 24, 2006.

Petitioner argues that VW's claim that the Commission should not consider the request for a temporary suspension because the FCC has already determined that wireline-to-wireless LNP is in the public interest is also totally without merit. That argument contradicts the very purpose of Sections 251(f)(2)(A) and (B) and would have the effect of negating those Sections since it would prevent any state Commission from ever examining on a carrier-specific basis a general policy set by the FCC on a national basis. In fact, the FCC stated in its First Report and Order On Local Competition, cited by VW, that "We conclude that Section 251(f) adequately provides for varying treatment for smaller or rural LECs where such variances are justified in particular instances." (Paragraph 1265) Petitioner insists that it has a right under Section 251(f)(2)(A) to seek a suspension or modification based on its company-specific circumstances and has presented company-specific evidence that would allow this Commission to make determinations under Sections 251(f)(2)(A) and (B) so as to grant the requested further temporary suspension sought by Petitioner and recommended by Staff.

## **B. Staff's Position**

As a general matter, Staff believes that the deployment of number portability capabilities by Illinois LECs is desirable. Staff points out that Congress required all telecommunications carriers to provide number portability pursuant to rules promulgated by the FCC. Staff notes that the FCC has promulgated a number of such rules and on at least one occasion has stated that the failure of telecommunications carriers to provide number portability hampers the development of local competition. Additionally, Staff states that the FCC has emphasized that carriers offering number portability also participate in number pooling to optimize numbering resources, which benefits consumers by staving off the creation of new area codes. Staff believes that the Commission should consider the fact that requiring wireline-to-wireless LNP would have the effect of making Petitioner number pooling capable. Staff also states that the Commission should consider the fact that granting a suspension to Petitioner (and to other petitioners in other dockets) will have the effect of creating a patchwork of suspensions in Illinois where wireline-to-wireless LNP is and is not available.

Nevertheless, Staff recommends a temporary suspension of Petitioner's obligation to provide wireline-to-wireless LNP. In making its recommendation, Staff focuses on Section 251(f)(2)(A)(i) of the TA96 as the most directly applicable of the three standards that appear in Section 251(f)(2)(A). According to Staff, FCC rules, specifically 47 CFR §§ 52.21-52.33, provide that Petitioner may recover most LNP-related costs from end users (on a per-access line basis as prescribed in the rules) over

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<sup>5</sup> See Docket Nos. 03-0726, 03-0730, 03-0731, 03-0732, and 03-0733.

a period of five years. Staff understands that Petitioner will do so if and when it is required to implement wireline-to-wireless LNP. Since costs associated with wireline-to-wireless LNP will be borne by Petitioner's customers generally, Staff asserts that a central question for the Commission is whether such costs would cause a "significant adverse economic impact on users of telecommunications services generally." In this specific application of Section 251(f)(2)(A)(i), Staff states that the phrase "users of telecommunications services generally" is best understood to refer to the general body of Petitioner's subscribers. Thus, Staff believes that the fact that wireline-to-wireless LNP costs would be borne largely by end-users warrants a Commission focus on Section 251(f)(2)(A)(i). Staff does not address Section 251(f)(2)(A)(ii) and simply asserts that Section 251(f)(2)(A)(iii) is not at issue in this proceeding since deployment of wireline-to-wireless LNP by Petitioner is technically feasible.

With regard to the cost burden on end-user customers and Petitioner, Staff states that there are two cost-related circumstances that are of concern. First, Staff notes that Petitioner does not currently provide wireline-to-wireline LNP. Because of this fact, Staff relates that Petitioner would need to recover all LNP related costs for the sole purpose of providing wireline-to-wireless LNP. This is in contrast, Staff observes, to carriers that already have LNP capabilities and whose incremental cost of extending the capability to wireless carriers is minimal at best. Second, Staff agrees with Petitioner that the issue of cost recovery for transit and transport has not yet been resolved. Because of its current routing arrangements, all calls from Petitioner's local exchange customers to numbers that have been ported (from Petitioner to wireless carriers) would incur routing and transport costs. Without a recovery mechanism in place, Staff indicates that it can not be determined how these costs will impact Petitioner or its end-users.

In an attempt to determine whether Petitioner's customers would experience a significant adverse economic impact, Staff reviewed Petitioner's cost estimates associated with providing wireline-to-wireless LNP.<sup>6</sup> Staff's testimony questions Petitioner's characterization of some costs and Petitioner's estimates of certain other costs. The impact of Staff's recommendations (Staff Scenario 1) regarding the Petitioner's cost analysis is a reduction in the estimated costs per access line per month from \$8.99 to \$3.93. Staff emphasizes that this figure is not a recommended rate for a LNP surcharge, but rather is a means to gauge the impact of wireline-to-wireless LNP on Petitioner's end-users. Staff also submitted a Scenario 2, where in addition to the adjustments made in Scenario 1, Staff also deleted transport and transiting costs because it is unclear whether the FCC will allow Petitioner to recover these costs through a LNP surcharge. Under Scenario 2, Petitioner's estimated LNP surcharge is \$3.56 per access line per month. Staff witness Hoagg relies on the Scenario 1 estimates in making his recommendation that a temporary suspension be granted.

Because Staff is not aware of any quantitative or precise measure (or any generally accepted methodology) to determine whether a given level of costs or charges would cause "a significant adverse economic impact on users of telecommunications

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<sup>6</sup> Staff notes that the Commission has no role in determining the appropriate rates for LNP cost recovery. All cost recovery for LNP associated costs is obtained via ILEC tariffs filed with the FCC.

services generally,” Staff recommends the careful application of judgment on a case specific basis. Staff compares the estimated LNP surcharge of \$3.93 per access line per month for Petitioner to SBC’s surcharge of \$0.28 per access line per month. Staff points out that the estimated per line surcharge for Petitioner is higher than the comparable figure for SBC. While not directly comparable, Staff believes that the figure for SBC provides a useful benchmark. Moreover, Staff asserts that the estimated per line surcharge for Petitioner’s subscribers appears unduly high in the context of the expected demand for and subscriber benefits associated with wireline-to-wireless LNP at this time. In this instance, Staff therefore concludes that the application of judgment warrants a temporary suspension of the wireline-to-wireless LNP requirements.

In evaluating the anticipated benefits of wireline-to-wireless LNP, Staff considered both direct and indirect benefits. Indirect benefits are, according to Staff, those benefits that non-porting customers receive by virtue of the fact that other customers of Petitioner can and do take advantage of the ability to port numbers from wireline to wireless carriers. Staff notes that the indirect beneficiaries share directly in the costs associated with wireline-to-wireless LNP since these costs are recovered over all access lines. Staff describes direct beneficiaries of wireline-to-wireless LNP as those customers who port a wireline telephone number to a wireless service. Staff states that the direct benefits are considerably larger, per subscriber, than any indirect benefits gained by those who do not port their telephone number. Assuming its assessment of the benefits is accurate, Staff indicates that the level of benefits realized by Petitioner’s customers depends on the number of customers choosing to port their wireline number to a wireless carrier. As of January 2004, Staff understands that the “take rate” for wireline-to-wireless LNP in areas where it is available is quite low (less than 1%). Based upon this information and other information available to the Staff concerning Petitioner’s serving area, Staff opines that the demand for wireline-to-wireless LNP in Petitioner’s service area is quite low.

Whether such a temporary waiver is consistent with the public interest, convenience, and necessity is Staff’s next inquiry. As noted above, Staff believes that there is currently very little interest in wireline-to-wireless LNP among Petitioner’s customers. Furthermore, Staff continues, the risks of a significant loss or downside from a decision to temporarily suspend the wireline-to-wireless LNP requirements are quite small. The fact that court challenges to various aspects of the FCC’s orders imposing wireline-to-wireless LNP on small carriers are currently pending also leads Staff to believe that a temporary waiver is appropriate. If the Commission does not now temporarily suspend these requirements and the small rural carriers prevail partially or wholly in the pending federal court proceedings, Staff is concerned by the possibility that Petitioner and/or its customers would incur at least some costs associated with wireline-to-wireless LNP even if Petitioner ultimately was not required to deploy wireline-to-wireless LNP. For these reasons, Staff believes that a temporary suspension of the wireline-to-wireless LNP requirements is consistent with the public interest, convenience, and necessity.

In light of the foregoing, Staff concludes that several factors and several policy considerations unique to smaller, more rural ILECs in Illinois render the FCC decision to require wireline-to-wireless LNP by these carriers no later than May 24, 2004 premature. Specifically, Staff opines that given the record, a suspension is necessary to avoid imposing a significant adverse economic impact on Petitioner's customers. Staff believes that a temporary suspension of these requirements by the Commission is warranted under Section 251(f)(2) of the TA96 and would be consistent with the public interest, convenience, and necessity.

Staff makes this recommendation despite its position that Petitioner has received a BFR for wireline-to-wireless LNP from a wireless carrier. From both a policy and a legal perspective, Staff does not believe that a receipt of a valid BFR should impede the grant of a suspension under the circumstances.

Staff recommends a suspension of approximately two years and no more than 30 months in length. Staff indicates that a suspension of approximately two years should be sufficient to allow for the resolution of relevant issues addressed in its testimony and to obtain additional vital information related to customer demand and the costs of providing wireline-to-wireless LNP. Staff notes that the Commission previously granted suspensions to five other ILECs that were 30 months in duration.<sup>7</sup>

### **C. VW's Position**

VW notes that Petitioner's case is essentially identical to those presented by 39 other petitioners seeking a suspension from the Commission of the requirement to provide wireline-to-wireless LNP. VW argues that Petitioner, as well as many of its counterparts in the other proceedings, has failed to meet the applicable legal standards set forth in Section 251(f)(2) of the TA96. VW contends that the law and sound public policy necessitate the denial of Petitioner's request.

According to VW, the FCC assigned the burden of proof in a suspension request, under Section 251(f)(2) of the TA96, to Petitioner in 47 C.F.R. §51.405(b). VW maintains that Petitioner has failed to demonstrate how a suspension is necessary to avoid adverse impacts on it, its customers, wireless carriers, and customers of wireless carriers. VW acknowledges that it casts a wider net when examining the impact of a suspension and explains that it disagrees with Petitioner and Staff's narrower application of the phrase "users of telecommunications services generally" from Section 251(f)(2)(a)(i) of the TA96. Based on rules of grammatical construction, legislative intent, and statutory construction, VW insists that the word "generally" can not mean that the Commission should look only at users of Petitioner's service. Rather, VW posits, the word "generally" means that the Commission must examine the impact of a suspension on users of telecommunications services who would be affected by an additional suspension. VW contends that Petitioner failed to raise or prove that a suspension would have an adverse impact on anyone but Petitioner and its customers.

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<sup>7</sup> The suspensions granted to the five ILECs in Docket Nos. 03-0726, 03-0730, 03-0731, 03-0732, and 03-0733 are currently being reconsidered by the Commission.

VW also raises concerns that Petitioner and Staff failed to examine various public interest standards which it believes this Commission must consider. VW first asserts that the Commission must consider the fact that LNP has already been determined by the FCC and this Commission to be in the public interest. VW avers next that this Commission must consider the fact that LNP optimizes number resources, which is in the public interest. VW contends that this is especially important since Petitioner operates in the 217 Numbering Plan Area, which has been declared to be in jeopardy by the North American Numbering Plan Administrator. A third public interest consideration that VW raises is the impact on competition that a suspension might have. By granting a suspension, VW is concerned that local competition will be hampered. But according to VW, denying Petitioner's request will, on the other hand, foster competition—a long stated goal of, and a statutory requirement imposed on, this Commission. A fourth consideration that VW maintains that the Commission must take into account is the adverse impact a suspension would have on the public interest because of consumer confusion caused by the fact that some residents of the state will be able to port their telephone numbers and other residents will not, creating a patchwork approach to a Federal mandate designed to benefit all consumers.

Copies of correspondence from VW that Petitioner has included with its testimony are of significance to VW. This correspondence, VW asserts, demonstrates that a wireless carrier sought to have LNP made available in Petitioner's service territory. But instead of complying with the TA96 and the FCC's rules, VW points out that Petitioner sought to avoid its obligation to provide wireline-to-wireless LNP and even specifically requests that the Commission not decide whether or not the correspondence constitutes a BFR.

VW points out that Petitioner contends that it should not be required to provide wireline-to-wireless LNP until there is a demonstrated demand. Demand for the service, however, is not determinative of the public interest and is not the legal standard to be met in order to qualify for a suspension from LNP, according to VW. Moreover, VW continues, Petitioner's claim that there is no demand for wireline-to-wireless LNP is not based on substantial or credible evidence. VW observes that Petitioner has not taken any formal steps to quantify or measure if there is any demand in its service territory. VW states that wireline-to-wireless LNP is a new, forward-looking requirement that seeks to spur competition among carriers and in the local exchange market. VW believes that the availability and marketing of wireline-to-wireless LNP will create its own demand once consumers begin to realize the benefits of competition.

Among the shortcomings VW perceives in Petitioner's case are numerous flaws and inflations contained in Petitioner's costs analysis. VW asserts that the FCC requires that only carrier specific costs directly related to providing number portability can be recovered through an LNP surcharge. VW recommends that the reductions applied by Staff be applied to the Petitioner's cost analysis before the Commission considers the amount of any LNP surcharge in this proceeding. VW also understands that the FCC separates considerations regarding routing calls from the obligation to

provide LNP. Therefore, VW asserts, this Commission should not consider transiting and transport costs in any analysis of the impact of an LNP surcharge upon the Petitioner's customers. When transiting and transport is removed from the equation, VW points out that Staff calculates Petitioner's estimated LNP surcharge to be \$3.56 per subscriber per month. VW argues that this amount is not significant and would not constitute a significant adverse impact on the Petitioner's customers and certainly not on "users of telecommunications services generally."

VW observes further that Staff's policy witness failed to analyze the LNP surcharge with transiting and transport costs removed. VW also claims that Staff's policy witness relied on Petitioner's position without independently verifying or examining assumptions made by Petitioner. VW criticizes Staff's policy witness for providing the exact same testimony in each suspension proceeding before this Commission, despite a statutory obligation for this Commission to examine such petitions on a case-by-case basis. VW also points out that not all Illinois ILECs have requested a suspension of the wireline-to-wireless LNP requirements.

Additionally, VW raises numerous procedural arguments regarding this and other petitions for suspensions from LNP obligations. Among these arguments is that the grant of the petition along with the other pending petitions would constitute a blanket waiver, which is not permitted by statute. VW also believes that granting the requested relief would constitute an improper collateral attack on the FCC's Number Portability Orders.

VW recommends that the Commission deny Petitioner's request for a suspension, and require Petitioner to provide wireline-to-wireless LNP as soon as practicable, but no later than November 24, 2004. In addition, VW requests that the Commission order Petitioner to provide periodic updates on the progress it is making toward such provision.

## **V. COMMISSION CONCLUSION**

Section 251(b)(2) of the TA96 obligates LECs, including Petitioner, to provide, to the extent technically feasible,<sup>8</sup> number portability in accordance with requirements prescribed by the FCC. The FCC has considered number portability and determined that LECs, including Petitioner, must provide wireline-to-wireless LNP. But as is its right under Section 251(f)(2) of the TA96, Petitioner now asks this Commission to suspend its obligation to provide wireline-to-wireless LNP until November 24, 2006. Petitioner seeks the suspension under Section 251(f)(2)(A)(i) and (B) of the TA96; and, pursuant to 47 C.F.R. §51.205, Petitioner bears the burden of proving that it is entitled to the desired suspension. Accordingly, the Commission must determine whether Petitioner has demonstrated that a suspension is necessary to avoid a significant adverse economic impact on users of telecommunications services generally and is consistent with the public interest, convenience, and necessity.

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<sup>8</sup> No suggestion has been made in this proceeding that wireline-to-wireless LNP is not technically feasible.

Before addressing the statutory criteria, a word on certain correspondence from wireless carriers is warranted. Clearly Petitioner received correspondence from at least one wireless carrier inquiring about Petitioner's ability to provide wireline-to-wireless LNP. Whether or not the correspondence constitutes a BFR, however, need not be determined by the Commission since this question is not before the Commission.

The first question for the Commission to resolve concerns the proper understanding of the word "generally" in the phrase "significant adverse economic impact on users of telecommunications services generally" found at Section 251(f)(2)(A)(i). Petitioner and Staff maintain that "generally" refers to Petitioner's customers generally while VW argues that the scope of "generally" is much broader and requires an assessment of the impact on *all users* of telecommunications services who would be affected by any suspension. VW's position is thought provoking, but unpersuasive at this time. Perhaps with further explanation and support, the Commission could be persuaded that VW's interpretation truly reflects legislative intent but at present the Commission finds the interpretation of Petitioner and Staff more reasonable.

With regard to the economic impact on Petitioner's customers, the Commission is cognizant that it is not being asked to approve any particular cost to be included in a LNP surcharge. That task falls on the FCC. Nevertheless, the Commission must consider the reasonableness of including the estimated costs in a LNP surcharge. Only by doing so can the Commission properly gauge the economic impact of wireline-to-wireless LNP on Petitioner's end-users and carry out its duty under Section 251(f)(2).

After calculating the costs that it says it expects to incur and recover from customers, Petitioner insists that its estimated LNP surcharge of \$8.99 per access line per month is accurate and at this level constitutes a significant adverse economic impact on its customers. According to Attachment 1 to Petitioner's Exhibit 1, Petitioner's estimate includes costs for switch translations; regulatory and legal start up activities, as well as administrative and order processing activities; employee education; technical trouble; customer education; and query, transport, and transit costs over a five year period reflecting a 10% take rate at the end of the five year period. In evaluating the estimated costs, however, the Commission is unfortunately without the benefit of a definitive cost analysis. During the course of this proceeding, questions have arisen regarding inclusion of certain costs for transport and transit, legal expenses, employee education, customer education, and other activities arguably associated with implementing wireline-to-wireless LNP.

Nevertheless, in light of such a high estimate to begin with, the Commission is persuaded that the costs imposed on customers could be significant. While the Commission believes that Petitioner's final FCC approved surcharge would likely be less than what the Petitioner presents in this proceeding, the Commission is concerned that the final surcharge will still be high enough to result in a significant adverse economic impact on customers. Admittedly, the overall uncertainty surrounding the

surcharge is troubling, but the Commission finds that Petitioner has sufficiently demonstrated that its estimated costs, even with reasonable adjustments, would result in a significant adverse economic impact on customers.

With regard to the second of the statutory criteria, the Commission is also of the opinion that the granting of a temporary suspension to Petitioner would not be inconsistent with the public interest, convenience, and necessity under the circumstances. Petitioner's customer base is very small, even among other small ILECs. Although the Commission is concerned about the impact of its decisions even on such small communities, in this instance the Commission believes that the greater good is served by a temporary suspension until more information is available on the type of LNP related costs that the FCC will allow carriers to recover.

Admittedly, the customers of Petitioner will lack one of the competitive opportunities that their neighbors may take advantage of if a suspension is granted. The likelihood of number pooling being available, which generally helps forestall the need for a new area code, would also be reduced if a suspension is granted. In an effort to mitigate the negative aspects of a suspension, however, the Commission will grant a suspension for less time than what Petitioner requests.

Accordingly, Petitioner's request for a temporary suspension should be granted in part. Rather than allow Petitioner to avoid the obligation to provide wireline-to-wireless LNP until November 24, 2006, as it requests, the Commission believes it is reasonable and appropriate to grant Petitioner a suspension until January 1, 2006. This time period will permit Petitioner approximately 16 months to assess the FCC's handling of other similar carriers and file for an extension of the suspension if warranted. In the absence of a renewed suspension by January 1, 2006, the Commission anticipates that Petitioner would be ready and able to implement wireline-to-wireless LNP by that date (assuming the receipt of a BFR). If Petitioner determines that it will implement wireline-to-wireless LNP prior to January 1, 2006 for some reason, it should notify the Chief Clerk of such through a compliance filing under this docket number.<sup>9</sup> Said compliance filing should be served on those on the service list in this docket as well.

## **VI. FINDINGS AND ORDERING PARAGRAPHS**

The Commission, having considered the entire record herein, is of the opinion and finds that:

- (1) Petitioner provides local exchange telecommunications services as a mutual telephone company as described in Section 13-202 of the Act;
- (2) the Commission has jurisdiction over the parties hereto and the subject matter hereof;

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<sup>9</sup> The compliance filing shall include the docket number of this proceeding and the date on which this Order was entered.



- (3) the facts recited and conclusions reached in the prefatory portion of this Order are supported by the record and are hereby adopted as findings of fact and law;
- (4) Petitioner's request for a temporary suspension of any obligation to implement wireline-to-wireless LNP under Section 251(b)(2) of the TA96 should be granted in part;
- (5) Petitioner should be granted a temporary suspension of the obligation to provide wireline-to-wireless LNP until January 1, 2006, as described in the prefatory portion of this Order;
- (6) in the event that Petitioner provides wireline-to-wireless LNP prior to January 1, 2006, Petitioner should notify the Chief Clerk of such through a compliance filing as described in the prefatory portion of this Order; and
- (7) all motions, petitions, objections, and other matters in this proceeding which remain unresolved should be disposed of consistent with the conclusions herein.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that Grandview Mutual Telephone Company's obligation to provide a wireline-to-wireless local number portability under Section 251(b)(2) of the Federal Telecommunications Act of 1996 is hereby temporarily suspended pursuant to Section 251(f)(2) of the Federal Telecommunications Act of 1996 until January 1, 2006, as described in the prefatory portion of this Order.

IT IS FURTHER ORDERED that Grandview Mutual Telephone Company shall comply with Finding (6).

IT IS FURTHER ORDERED that all motions, petitions, objections, and other matters in this proceeding which remain unresolved are disposed of consistent with the conclusions herein.

IT IS FURTHER ORDERED that subject to the provisions of 83 Ill. Adm. Code 200.880, this Order is final; it is not subject to the Administrative Review Law.

DATED: July 29, 2004.

Briefs on Exceptions must be received by August 10, 2004.

Administrative Law Judge